

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of the legislation. It is a collection of a number of bills, a majority of which have passed favorably through the Subcommittee on Courts with little or no controversy.

There are five titles: the Pay Adjustment for Federal Judges; the Courts and Intellectual Property Legislation; the Jurisdiction of Federal Circuit over Patent Cases; the Diversity Jurisdiction of Federal Courts; and, finally, the Multidistrict Litigation in the Lexecon case before the Supreme Court.

The most important is the pay adjustment for Federal judges, because we provide a cost-of-living pay adjustment for 2007. The Federal judges do not receive such COLAs unless Congress provides specific statutory authorization each year. It is my hope that some day we will make it automatic. Members of the Federal judiciary deserve this raise. We have a number of Federal judges who are forced to turn back their appointment because the salary is inadequate to their basic needs.

We appreciate the hardworking men and women who serve; and to me, this is an important part of the constitutional democracy that we have formed here, and we must do everything to ensure that we attract and retain the highest quality of judges.

Now, these members of the judiciary are called to duty by a sense of honor, and the judges already make far less than most of them could earn in private firms. And while this pay disparity will exist, Congress should at least ensure that judicial pay does not effectively shrink. And so the failure to give judges a COLA would constitute in effect such a reduction in pay.

Title II contains a number of measures. We respond in part to the devastation caused by Hurricane Katrina by permitting the Patent and Trademark Office director to extend deadlines during emergencies.

Section 202 is a resolution honoring the 25th anniversary of the Bayh-Dole Act, and that is Senator Bayh, Sr., who formerly served from the great State of Indiana. And this measure enhanced public and private partnerships for the commercialization of inventions.

Section 203 of the bill requires that each Federal or State court recognize out-of-state notarial acts that meet the following two conditions that are indicated in the measure.

Title III of the bill clarifies the Federal Circuit Court of Appeals has exclusive jurisdiction to hear patent appeals, and that I think is extremely important. The goal of title III is to maintain the integrity of the patent system.

Title IV amends the laws governing diversity jurisdiction. And this is an important and critical area.

And then finally we have the Multidistrict Litigation, which has been passed several times, but never acted on by the other body.

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This title would overturn the Supreme Court case called the Lexecon decision. While I have supported this legislation in the past, I have consistently noted several concerns that I hope will be able to be addressed in our discussions that I anticipate with the Senate. I urge my colleagues to support this measure before the House on the suspension calendar.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of my time.

I want to clarify the record. The only thing that is in H.R. 5454 is the judges' COLA. I think it is relatively non-controversial, but it is a housekeeping thing that we have to do before the session adjourns.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CAMPBELL of California). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 5454.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

COPYRIGHT ROYALTY JUDGES PROGRAM TECHNICAL CORREC- TIONS ACT

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 1036) to amend title 17, United States Code, to make technical corrections relating to Copyright Royalty Judges, and for other purposes.

The Clerk read as follows:

Senate amendment:

On page 16, line 4 through 7, strike and insert the following:

SEC. 5. PARTIAL DISTRIBUTION OF ROYALTY FEES.

Section 801(b)(3)(C) of title 17, United States Code, is amended—

(1) by striking all that precedes clause (i) and inserting the following:

“(C) Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111, 119, or 1007, may, upon motion of one or more of the claimants and after publication in the Federal Register of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants—”; and

(2) in clause (i), by striking “such” and inserting “the”.

SEC. 6. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided under subsection (b), this Act and the amendments

made by this Act shall be effective as if included in the Copyright Royalty and Distribution Reform Act of 2004.

(b) PARTIAL DISTRIBUTION OF ROYALTY FEES.—Section 5 shall take effect on the date of enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1036, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 1036, the Copyright Royalty Judges Program Technical Corrections Act. This legislation amends certain technical aspects of the copyright act that were substantively amended by Congress' enactment of the Copyright Royalty and Distribution Reform Act of 2004.

At the outset, it should be noted that H.R. 1036 was considered by the House under suspension of the rules last November and passed by a voice vote. The other body took up the bill in July and amended it to incorporate related non-controversial language from the text of H.R. 5593, the Royalty Distribution Clarification Act of 2006.

Copyright Royalty Judges are responsible for distributing hundreds of millions of dollars in royalty payments to rightful copyright holders to make partial distributions of any noncontested royalties prior to the end of a distribution proceeding. The purpose of H.R. 5593 and the Senate amendment now before us is to provide the judges the ability to more efficiently administer their fiduciary duties and enable copyright holders whose works are used under the various compulsory licenses contained in title 17 of the United States Code to have greater access to their own funds.

Like the earlier version approved by the House, this iteration of H.R. 1036 makes only noncontroversial changes in the copyright royalty and distribution system.

The enactment of this bill will assist the CRJs and the Library of Congress in administering the copyright royalty and distribution system and help to resolve disputes in a more efficient, predictable, and rational manner.

I urge my colleagues to support this bill and send it to the President for his signature.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Copyright Royalty Technical Corrections Act is just that. It is a major accomplishment of the Subcommittee on Courts and makes a number of technical corrections.

Two substantive improvements I would bring to the floor's attention at this point:

It clarifies the decisions of the new copyright tribunal will serve as precedent for later decisions, establishes consistency for written statements to the tribunal, and provides for fee waivers for those claiming royalties in excess of \$1,000.

The other major substantive change resolves the ambiguity about when partial payments or distributions of royalties to content owners are allowed.

This measure before us would permit Copyright Royalty Judges, upon the motion of a claimant and after publication of a request for responses, to make a partial distribution of cable and satellite royalty fees at any time after the filing of claims for distribution if no eligible claimant has stated a reasonable objection.

I think the committee is in accord with this bill. I urge that Members of the House support this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I would like to thank the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary, for yielding me this time.

Mr. Speaker, as Chairman SENSENBRENNER just stated, H.R. 1036, the Copyright Royalty Judges Program Technical Corrections Act, amends certain technical aspects of the Copyright Act which itself was amended by the Copyright Royalty and Distribution Reform Act of 2004.

A chief objective of the Copyright Reform Act was to delineate between functions of the Copyright Office and the functions of the newly established Copyright Royalty Judges, or CRJs.

Unfortunately, during the bill enrollment process, the law was written to state that the Librarian of Congress was charged with authorizing the distribution of funds. The language could be subject to an interpretation that Congress wanted the Librarian to retain a role that had clearly been intended to be exercised only by the new CRJs.

The purpose behind this bill is to correct errors such as this and to enable the reform act to operate as Congress originally intended.

In addition, the bill contains a number of other noncontroversial stylistic, technical, clarifying, and conforming changes that have been considered and agreed to by Members on both sides of the aisle.

As Chairman SENSENBRENNER noted, H.R. 1036 has already passed the House

of Representatives without objection on November 16, 2005.

The reason the bill has returned is because the other body amended it to include language from H.R. 5593, the Royalty Distribution Clarification Act of 2006, which was a bill I authored and introduced along with Ranking Members CONYERS and BERMAN. The purpose of that bill and the incorporated language is to provide the CRJs with explicit statutory language to distribute, prior to the end of a royalty distribution proceeding, part of the royalty pool when it is established who the rightful claimants are.

Mr. Speaker, I urge Members to support the amended Copyright Royalty Judges Program Technical Corrections Act and send the bill directly to the President for his signature.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 1036.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

TRADEMARK DILUTION REVISION ACT OF 2006

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 683) to amend the Trademark Act of 1946 with respect to dilution by blurring or tarnishment.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

(a) *SHORT TITLE.*—This Act may be cited as the “Trademark Dilution Revision Act of 2006”.

(b) *REFERENCES.*—Any reference in this Act to the Trademark Act of 1946 shall be a reference to the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (15 U.S.C. 1051 et seq.).

SEC. 2. DILUTION BY BLURRING; DILUTION BY TARNISHMENT.

Section 43 of the Trademark Act of 1946 (15 U.S.C. 1125) is amended—

(1) by striking subsection (c) and inserting the following:

“(c) *DILUTION BY BLURRING; DILUTION BY TARNISHMENT.*—

“(1) *INJUNCTIVE RELIEF.*—Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

“(2) *DEFINITIONS.*—(A) For purposes of paragraph (1), a mark is famous if it is widely recog-

nized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner. In determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant factors, including the following:

“(i) The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties.

“(ii) The amount, volume, and geographic extent of sales of goods or services offered under the mark.

“(iii) The extent of actual recognition of the mark.

“(iv) Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

“(B) For purposes of paragraph (1), ‘dilution by blurring’ is association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark. In determining whether a mark or trade name is likely to cause dilution by blurring, the court may consider all relevant factors, including the following:

“(i) The degree of similarity between the mark or trade name and the famous mark.

“(ii) The degree of inherent or acquired distinctiveness of the famous mark.

“(iii) The extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark.

“(iv) The degree of recognition of the famous mark.

“(v) Whether the user of the mark or trade name intended to create an association with the famous mark.

“(vi) Any actual association between the mark or trade name and the famous mark.

“(C) For purposes of paragraph (1), ‘dilution by tarnishment’ is association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.

“(3) *EXCLUSIONS.*—The following shall not be actionable as dilution by blurring or dilution by tarnishment under this subsection:

“(A) Any fair use, including a nominative or descriptive fair use, or facilitation of such fair use, of a famous mark by another person other than as a designation of source for the person's own goods or services, including use in connection with—

“(i) advertising or promotion that permits consumers to compare goods or services; or

“(ii) identifying and parodying, criticizing, or commenting upon the famous mark owner or the goods or services of the famous mark owner.

“(B) All forms of news reporting and news commentary.

“(C) Any noncommercial use of a mark.

“(4) *BURDEN OF PROOF.*—In a civil action for trade dress dilution under this Act for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that—

“(A) the claimed trade dress, taken as a whole, is not functional and is famous; and

“(B) if the claimed trade dress includes any mark or marks registered on the principal register, the unregistered matter, taken as a whole, is famous separate and apart from any fame of such registered marks.

“(5) *ADDITIONAL REMEDIES.*—In an action brought under this subsection, the owner of the famous mark shall be entitled to injunctive relief as set forth in section 34. The owner of the famous mark shall also be entitled to the remedies set forth in sections 35(a) and 36, subject to the discretion of the court and the principles of equity if—

“(A) the mark or trade name that is likely to cause dilution by blurring or dilution by tarnishment was first used in commerce by the person against whom the injunction is sought after the date of enactment of the Trademark Dilution Revision Act of 2006; and